



## CITY of LAGUNA NIGUEL

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May 28, 2004

Ms. Jody Ebsen, Engineering Geologist  
 California Regional Water Quality Control Board, San Diego Region  
 9174 Sky Park Court, Suite 100  
 San Diego CA 92123-4340

**BASIN PLAN TRIENNIAL REVIEW  
 COMMENTS ON DRAFT TECHNICAL REPORT**

2004 JUN - 2 A 8:59  
 SAN DIEGO REGIONAL  
 WATER QUALITY  
 CONTROL BOARD

Dear Ms. Ebsen:

We appreciate the opportunity to comment on the Draft Technical Report for the 2004 Triennial Review cycle of the San Diego Region Basin Plan. As a member of the Bacteria I TMDL Stakeholder Advisory Group and of the California Stormwater Quality Association Science Task Force, I offer the following recommendations with an eye toward prioritizing Basin Plan updates in a way that will be sufficiently comprehensive to be useful within certain selected and timely areas of focus.

1. **Priority Item #4** includes a proposal to *"add language to the Basin Plan clarifying anthropogenic versus natural sources of pollutants including controllable water quality factors. The text on this issue was inadvertently omitted from Chapter 3 during the 1994 Basin Plan revision."* Has this text has already been formally developed? If so, it would be appropriate to set the language forth specifically in the Technical Report so the public can see exactly what is intended. The associated Resource Estimation suggests that all the listed Priority #4 tasks will consist of straightforward, noncontroversial edits, but this may not be the case, especially if the language has not already been developed and appropriately reviewed; and/or if scientific understanding of the issues has evolved during the past ten years.

2. **Priority Item #5** proposes to *"add necessary language to the Basin Plan that provides for the establishment of compliance time schedules in the NPDES permits."* Why, exactly, is it necessary to make this addition? Compliance time schedules are already appropriately provided for under the TMDL process and in any enforcement action. If circumstances warrant setting forth a compliance schedule, the Regional Board can do that now, whether it's described in the Basin Plan or not. Consequently, this item seems quite unnecessary, and its pursuit seems like a misuse of scarce resources.

3. **Priority Item #6** proposes to “*update and clarify existing water quality objectives for bacteria...*”. The rest of the paragraph makes clear that one of the main intents is to provide for alternative Basin Plan bacteria objectives as “implementation provisions” parallel to the “interim targets” that have been tentatively set in the Draft Technical Report for the Bacteria I TMDL. Presumably, the long-term idea is to allow the “interim targets” to become acceptable as “final TMDLs.” This is a very laudable and appropriate effort, in the general sense. However, it should be noted that the scientific and technical validity of the specific approach to developing bacterial “interim targets” in the draft TMDL has been deeply questioned by the entire Bact I TMDL Stakeholder Advisory Group. This paragraph should be revised to indicate that bacteria “implementation provisions” *may include, but not be limited to* incorporation of a reference watershed, watersheds minimally impacted by anthropogenic activities, or *such other approaches as may be found appropriate, useful and compatible with EPA guidelines.*”

4. **Priority Item #7** asserts that “*Existing Basin Plan text must be expanded to make clear that MS4 permits require dischargers to meet water quality standards in addition to reducing pollutants to the maximum extent practicable...*”. The Resource Estimation suggests that incorporating all the various Priority #7 changes would require only minimal effort. We strongly suspect that a change to the MEP standard would not be readily accepted by the MS4 permittees and would generate significant legal challenges. Furthermore, this subject has been in dispute even between the State and U.S. EPA. This issue is *not* an appropriate one to deal with independently in one Region’s Basin Plan: it needs to be addressed at the State level, probably in the Stormwater Policy document that the State is supposed to be currently drafting. Requiring dischargers to meet water quality standards *beyond the maximum extent practicable* effectively replaces the Best Management Practice standard with a Best Available Technology standard for every MS4 pipe outfall, regardless of how expensive or energy-consumptive. For the Triennial Review document, Priority Item #7 should be changed to delete the proposal to eliminate MEP; or the Resource Estimation should be very substantially increased to acknowledge the reality that making this change would be hard-fought, expensive, time-consuming, and necessarily coordinated State-wide.

5. **Priority Item #11** proposes to “*adopt a subcategory of REC-1 called ‘Wildlife Impacted Recreation’ for waterbodies designated with REC-1 beneficial use which also support an abundance of wildlife...*”. This idea deserves a higher priority, so that it can be addressed within the current Triennial Review cycle. Such subcategories are generally supported by EPA guidelines. More critically, REC-1 subcategories are likely to become vital tools in the Implementation Plans that are supposed to be developed in the next few years under the Bact I and Bact II TMDLs.

6. **Priority Item #37** proposes to “*revise and expand Basin Plan discussion on assimilative capacity and mixing zones, to clearly define when and where groundwater assimilative capacity and surface water mixing zones are applied.*” The “surface water mixing zone” part of this item deserves a higher priority, so that it can be addressed within the current Triennial Review cycle. How mixing zones are applied has already become an issue of major contention under the draft Technical Report for the Bact I

TMDL. Timely discussion, clarification and resolution of this issue is necessary and appropriate in conjunction and concurrent with the development of the TMDL.

7. **Priority Item #43** proposes to “*evaluate the designation of potential REC-1 and REC-2 for areas that are channelized.*” Similarly, Priority Item #45 proposes to “*remove beneficial uses such as contact recreation (REC-1) in flood control areas and reservoirs where public access is restricted; and revise designated beneficial uses to recognize flood control and its incompatibility with beneficial uses on a case by case basis.*” These items deserve a higher priority, so they can be addressed within the current Triennial Review cycle. The case-by-case applicability of REC-1 use to flood control areas will become a critically important issue that may yield vital tools in the Implementation Plans that are supposed to be developed in the next few years under the Bact I and Bact II TMDLs.

8. **Priority Item #58** proposes to “*incorporate seasonal flow conditions into water quality objectives, setting different objectives for high and low flow conditions.*” This item is closely related to the discussion under Priority Item #6 regarding wet-weather exceedances specifically with respect to bacteria objectives. It deserves a higher priority, at least for bacteria, so it can be addressed within the current Triennial Review cycle and incorporated appropriately into the Bact I Technical TMDL and/or Implementation Plans for the impaired waterbodies. Flow-based and seasonal-use subcategories for REC-1 are generally supported by EPA guidelines.

9. The Introduction to the draft Triennial Review Technical Report should include clarifications that:

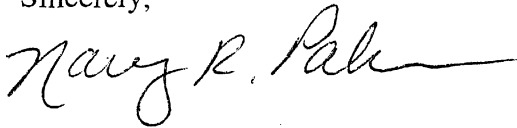
- a) The specific wording of a Priority Item in the Technical Report does not necessarily preclude an investigation of somewhat broader or more focused scope, if such broadening or focusing is determined, during the course of the investigation, to be appropriate and reasonably within the intent of the authorized Priority Item.
- b) Investigations of Priority Items will include appropriate opportunities for stakeholder input and review as items are prepared for the formal Basin Plan amendments.

10. We fully recognize that funding constraints for the Triennial Review process will make it impossible for Regional Board staff to address all issues worthy of further inquiry. Specifically with regard to the bacteria-TMDL-related items described above for which we are recommending a higher priority ranking, I would like to point out that an exceptional opportunity exists right now for Region 9 to take advantage of an effort currently being fully funded by Region 8 and EPA to examine appropriate bacteria issues and water quality objectives in inland surface freshwaters. The Stormwater Quality Standards Task Force convening at the Santa Ana Watershed Project Authority as part of Region 8's Triennial Review effort includes representatives from the regulated community, the environmental community, the business community and the scientific

community in addition to the Regional Board and EPA. The stakeholders pitched in to hire appropriate consultants and enable all representatives to support their pursuit of a systematic consensus-building process. The Santa Ana River watershed is very comparable climatically, topographically, and in the range of land uses and stakeholder interests to the Region 9 watersheds included in the Region 9 Bact I TMDL for impaired creeks. We encourage Region 9 to get involved in the Task Force meetings to see how their process, findings and decisions could be directly applicable to Region 9 at minimal cost. We believe that stakeholders in Region 9 would step forward to work cooperatively with Region 9 staff on this issue, and could potentially augment the resources available for its pursuit.

Thank you for the opportunity to comment. We would appreciate your adding our email address (npalmer@ci.laguna-niguel.ca.us) to your email distribution list so that we can be notified automatically of further developments in the Triennial Review process.

Sincerely,

A handwritten signature in cursive script, reading "Nancy R. Palmer". The signature is written in dark ink and is positioned above the printed name and title.

Nancy Palmer  
Senior Watershed Manager